

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
MACON DIVISION**

ELECHIA GIBSON,

Plaintiff,

v.

WAL-MART STORES EAST, LP,
WAL-MART STORES EAST, INC.,
WAL-MART STORES, INC., and
KEVIN MCCUEN,

Defendants.

Case No. 5:09-CV-228 (HL)

ORDER

This matter is before the Court on the Motion to Dismiss Kevin McCuen (Doc. 9) (the “Motion”) filed by Wal-Mart Stores East LP, Wal-Mart Stores East Inc. and Wal-Mart Stores Inc. (the “Wal-Mart Defendants”). For the following reasons, the Motion is denied.

The Wal-Mart Defendants filed this motion to dismiss Defendant McCuen on the theory that he was fraudulently joined. “Fraudulent joinder is a judicially created doctrine that provides an exception to the requirement of complete diversity.” Triggs v. John Crump Toyota, Inc., 154 F.3d 1284, 1287 (11th Cir. 1998). Fraudulent joinder is “[t]he filing of a frivolous or otherwise illegitimate claim against a non-diverse defendant solely to prevent removal” Brooks v. Paulk & Cope, Inc., 176 F.Supp. 1270, 1273 (M.D. Ala. 2001). In this case, the question of defeating removal by joining Defendant McCuen is irrelevant because, pursuant to

this Court's Orders (Docs. 19 & 23), this case was properly removed based on diversity of citizenship subject matter jurisdiction. Therefore, the question of fraudulent joinder is moot and the Motion (Doc. 9) is denied.

SO ORDERED, this the 24th day of February, 2010.

s/ Hugh Lawson
HUGH LAWSON, SENIOR JUDGE

jch